

REMARKS:

SPECIFICATION AMENDMENTS

The Applicants have amended the paragraph beginning on page 13, line 10 and ending on page 14 at line 24 to implement minor typographical and grammatical corrections. Specifically, the word --be-- has been inserted between "may" and "patterned" at page 13, line 26. Furthermore, "frquency" has been corrected to read --frequency-- at page 13, line 32. The Applicant submits that these amendments make explicit that which was implicit in the specification as filed. As such, no new matter has been entered with these amendments.

CLAIM AMENDMENTS

10 Claims **1** and **5** have been amended to implement a minor typographical correction. Specifically, the superfluous second periods at the ends of claims **1** and **5** have been deleted. Furthermore, to expedite prosecution, the Applicants have amended claim **19** to correct minor grammatical and typographical errors. Specifically the word "and" has been moved from the end of the claim to the end of the next to last clause and the semicolon at the end of the claim has been changed to a period. The Applicants submit that these amendments merely make explicit that which was implicit in the claims as originally filed. As such, no new matter has been added with these amendments. The Applicants further submit that these amendments correct minor matters of form and are not being done for any reason related to patentability and that all of the amendments do not narrow any limitation of the claims within the meaning of the decision in
15 *Festo*.

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Support for new claims **25** and **26** can be found in the specification, e.g., at the section beginning on page 19, line 27 and ending on page 20, line 12. As such no new matter has been added with this amendment. Support for new claim **27** can be found in the specification, e.g., at page 18, lines 8-12. Support for new claim **28** can be found in the specification, e.g., beginning at page
25 14, line and ending at page 15, line 24.

ELECTION/RESTRICTIONS

The Examiner has required election of one of the following species:

Species I, drawn to a digital focus system comprising a series of switchable elements, each switchable element having controllably switchable focal power.

Species II, drawn to a method of fabricating a switchable element.

The Applicant provisionally elects, with traverse, Species I, with original claims **1-18, 21-24** and new claims **25-28** readable thereon. The Applicant submits that new claims **25** and **26** are generic to both species.

5 The Applicant traverses the requirement on the grounds that it is improper since the Examiner has not met his burden under MPEP 816 to give reasons for his holding of distinctness. The Examiner has set forth only a conclusion that the two species are distinct and has set forth no particular reasons that he has relied on in holding that the two species are patentably distinct. MPEP 816 clearly states, “[a] mere statement of conclusion is inadequate.” Therefore the

10 Applicant respectfully requests that the Examiner withdraw the election requirement.

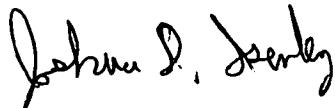
Furthermore, the Applicant notes that Species I includes claims **25** and **26**. The Applicant submits that claims **25** and **26** are generic claims linking Species I and Species II. As such, should claim **25** or **26** be allowed, the Applicant submits that the Examiner must examine all the non-elected claims linked by these claims, i.e., the claims of Species II, claims **19** and **20** (see

15 MPEP 809.04).

CONCLUSION

The applicants respectfully request that the Examiner withdraw the restriction requirement, enter the amendments, consider the application and point out the allowable subject matter in the next Office Action.

20 Respectfully submitted,



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